

claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” Id. § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff alleges that Defendants Glarza and Gomez sexually harassed him and forced themselves on him while he was sleeping “beside him in bed.” (Compl. 3.) Plaintiff does not provide any other information with respect to these defendants by which the Court may determine whether these defendants were acting “under the color of state law.” Furthermore, the complaint lacks insufficient information for the Court to determine whether Plaintiff has filed this action in the proper venue; there is no information as to where the defendants reside or where the alleged events occurred. See 28 U.S.C. § 1391(b). Accordingly, Plaintiff will be granted leave to amend to cure these deficiencies.

CONCLUSION

In light of the foregoing, the Court hereby orders as follows:

1. The complaint is DISMISSED with leave to amend within **thirty (30) days** from the date this order is filed to cure the deficiencies described above. The amended complaint must include the caption and civil case number used in this order (08-05305 JF (PR)) and the words FIRST AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the previous complaints, Plaintiff must include in his amended complaint all the claims he wishes

1 to present and all of the defendants he wishes to sue. See Ferdik v. Bonzelet, 963
2 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from the
3 prior complaint by reference. **Failure to file an amended complaint in**
4 **accordance with this order will result in dismissal of this action without further**
5 **notice to Plaintiff.**

6 2 It is Plaintiff's responsibility to prosecute this case. Plaintiff must
7 keep the Court informed of any change of address by filing a separate paper with the
8 clerk headed "Notice of Change of Address." He must comply with the Court's
9 orders in a timely fashion or ask for an extension of time to do so. Failure to comply
10 may result in the dismissal of this action pursuant to Federal Rule of Civil Procedure
11 41(b).

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13 DATED: 3/10/09


14 JEREMY FOGEL
United States District Judge